

REMARKS

Claims 1-75 are pending in this application, with claims 1, 27, 34, 37, 47 and 72 being independent. Claims 4, 7-10, 20, 22, 31, 32, 34-36 and 38 have been previously withdrawn with traversal by applicant. Claim 1 has been amended, and claims 39-75 have been added. No new matter has been added.

Applicant reserves the right to further contest the Examiner's restriction requirement at a later date.

Applicant acknowledges with appreciation the Examiner's allowance of claims 27-30, 33 and 37 and indication that claims 24-26 are directed to allowable subject matter. New independent claim 72 is identical to allowable claim 24 with the exception that claim 72 does not recite "wherein the cutter comprises a hollow body, the body defining an opening therethrough." Applicant submits that claim 72 and its dependent claims 73-75 are allowable over the cited art at least because the cited art neither describes nor suggests "a cutter ... wherein the cutter comprises a first shaft and a second shaft, the shafts being located 180° apart from each other along an outer surface of the cutter, and wherein the first shaft comprises a plurality of teeth extending from an outer circumference of the first shaft."

Independent claim 1 and its dependent claims 2, 3, 5, 6, 11-18 and 23 have been rejected as being anticipated by Staehlin (U.S. Patent No. 6,309,394). Claims 19 and 21, which depend from claim 1, have been rejected as being unpatentable over Staehlin.

Independent claim 1, as amended, recites a tissue cutting instrument that includes, among other features, an outer member and "a hollow inner member received within the outer member" (emphasis added). Staehlin does not describe or suggest that Staehlin's indexing shaft 560, which the Examiner equates to the recited inner member, is hollow. Rather, as shown in Fig. 11, the shaft appears solid. For at least this reason, claim 1 and its dependent claims are patentable over Staehlin.

New independent claim 47 recites a tissue cutting instrument that includes an outer member, an inner member received within the outer member, and "a cutter coupled to the inner and the outer members such that rotation of the inner member about an axis causes an off-axis

movement of the cutter, the off-axis movement acting to cut tissue" (emphasis added). Claim 47 and its dependent claims 48-71 are patentable over Staehlin at least because Staehlin does not describe or suggest the recited cutter having an off-axis movement acting to cut tissue. While Staehlin's cutting tool 514 can be moved off-axis to position a burr, it is the rapidly spinning movement of the burr that acts to abrade tissue, not the off-axis movement of the burr.

Applicants submit that all claims are in condition for allowance.

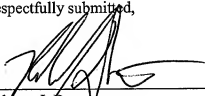
Applicants do not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, however, applicants may have not addressed all characterizations of the art and reserve the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by the applicants to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that applicants' comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

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Respectfully submitted,

Date: _____

7/19/06



Roberto J. Devolo
Reg. No. 55,108

Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005-3500
Telephone: (202) 783-5070
Facsimile: (202) 783-2331